

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KARLA BELMONTE, O/B/O J.B.V.,
A MINOR CHILD,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. CV-13-3047-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING
FOR AN AWARD OF BENEFITS

BEFORE THE COURT is Plaintiff's Motion for Summary Judgment, and Defendant's Motion to Remand Pursuant to Sentence Four, 42 U.S.C. § 405(G). ECF Nos. 18, 28. Attorney D. James Tree represents Plaintiff, and Special Assistant United States Attorney Kathryn A. Miller represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and remands for an immediate award of benefits.

JURISDICTION

On May 16, 2007, Plaintiff filed an application for supplemental security income on behalf of her minor child, JBV, on June 15, 2007. Tr. 39; 134. Plaintiff's mother listed her disabling conditions as a right club foot, and she alleged the onset

1 date as April 18, 2001. Tr. 138. Plaintiff's claim was denied initially and on
2 reconsideration, and she requested a hearing before an administrative law judge
3 (ALJ). Tr. 41-85.

4 On October 6, 2009, ALJ Kim Parrish held a hearing, at which Plaintiff's
5 mother, Karla Belmonte, who was represented by counsel, testified. Tr. 298-307.
6 The ALJ denied benefits on December 23, 2009. Tr. 16-21. The Appeals Council
7 denied review on July 27, 2010. Tr. 1-3. Plaintiff filed an action in the United
8 States District Court, where the ALJ's decision was reversed because the ALJ
9 failed to provide legally sufficient reasons supported by the record for rejecting the
10 findings of Plaintiff's treating physician Jennifer McCabe Lentz, and because the
11 ALJ failed to address the testimony from Plaintiff's mother. Tr. 273-93. The case
12 was remanded for administrative proceedings. Tr. 273; 292.

13 On January 14, 2013, ALJ Virginia Robinson held a hearing, at which
14 medical expert and pediatrician Perry Grossman, and Plaintiff's mother Karla
15 Belmonte, who was represented by counsel, testified. Tr. 308-39. On February 22,
16 2013, the ALJ issued a decision finding Plaintiff not disabled. Tr. 254-67. The
17 Appeals Council declined review, and the instant matter is before this court
18 pursuant to 42 U.S.C. § 405(g).

19 On January 27, 2014, Plaintiff filed a Motion for Summary Judgment and
20 requested the court reverse and remand for an award of benefits. ECF No. 18.
21 Defendant conceded that the ALJ had erred, but argued that the proper remedy is
22 remand for additional administrative proceedings. ECF No. 28.

23 **STATEMENT OF FACTS**

24 The facts have been presented in the administrative hearing transcript, the
25 ALJ's decision, and the briefs of the parties and thus, they are only briefly
26 summarized here. Plaintiff was born with a clubbed foot, and has had two
27 corrective surgeries. Tr. 328. At the time of the first hearing, Plaintiff was eight
28 years old, and in the third grade. Tr. 299. Plaintiff's mother testified that Plaintiff

1 can walk “up to five to 10 minutes,” before she starts limping and feeling pain in
2 her right ankle. Tr. 300. Plaintiff’s mother said that on days when Plaintiff “runs
3 too much, plays too much,” she will “just lay down and take naps” and try to make
4 the pain recede. Tr. 301. Plaintiff’s mother said this happens every day, but some
5 days are worse. Tr. 301. Plaintiff typically awakens in pain a couple of nights per
6 week. Tr. 302. As soon as her pain begins, Plaintiff has a lack of energy. Tr. 302.
7 Plaintiff’s mother described how her impairment limits her: “She limits herself.
8 She can’t play around with other kids. She can’t keep up with them. She can’t
9 join some sports. There’s a lot of things that she can’t do.” Tr. 302. Plaintiff also
10 often falls. Tr. 303.

11 At the time of the second hearing, Plaintiff was in the sixth grade, and she
12 testified that sometimes during PE class, she has to sit out. Tr. 318. She said she
13 cannot make it all the way around the track due to pain. Tr. 318. Plaintiff said that
14 without taking a break to rest, she can walk ten to 12 minutes. Tr. 318-19.
15 Plaintiff said sometimes when she is walking, she can hear her foot “pop” and it
16 starts hurting. Tr. 319.

17 Plaintiff’s mother also testified at the second hearing. Tr. 320. She stated
18 that Plaintiff missed a doctor appointment because she was not able to get the day
19 off work, and she was not able to afford treatment. Tr. 320. Plaintiff’s mother
20 testified that Plaintiff is unable to keep up with her siblings, and she can walk for
21 five to 10 minutes without limping. Tr. 322-23. She also testified that Plaintiff is
22 “unable to run. She hops ... She is unable to run like a normal kid would be able
23 to. She’s unable to run or race with her siblings if they do race when they play
24 around.” Tr. 323. Plaintiff’s mother also explained that Plaintiff does not like to
25 go anywhere that she knows will require significant amounts of walking. Tr. 324.

26 STANDARD OF REVIEW

27 The ALJ is responsible for determining credibility, resolving conflicts in
28 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,

1 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*,
2 although deference is owed to a reasonable construction of the applicable statutes.
3 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ
4 may be reversed only if it is not supported by substantial evidence or if it is based
5 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
6 evidence is defined as being more than a mere scintilla, but less than a
7 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
8 evidence as a reasonable mind might accept as adequate to support a conclusion.
9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
10 more than one rational interpretation, the court may not substitute its judgment for
11 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*
12 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by
13 substantial evidence will still be set aside if the proper legal standards were not
14 applied in weighing the evidence and making the decision. *Browner v. Secretary*
15 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial
16 evidence exists to support the administrative findings, or if conflicting evidence
17 exists that will support a finding of either disability or non-disability, the ALJ's
18 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
19 Cir. 1987).

20 SEQUENTIAL PROCESS

21 To qualify for disability benefits, a child under the age of eighteen must
22 have "a medically determinable physical or mental impairment, which results in
23 marked and severe functional limitations, and which can be expected to result in
24 death or which has lasted or can be expected to last for a continuous period of not
25 less than 12 months." 42 U.S.C. § 1382c(a)(3)(C)(I). The Social Security
26 Administration has enacted a three step sequential analysis to determine whether a
27 child is eligible for SSI benefits on the basis of a disability. 20 C.F.R. §
28 416.924(a). First, the ALJ considers whether the child is engaged in "substantial

1 gainful activity.” *Id.*, at § 416.924(b). Second, the ALJ considers whether the
2 child has a “medically determinable impairment that is severe,” which is defined as
3 an impairment that causes “more than minimal functional limitations.” *Id.* at §
4 416.924(c). Finally, if the ALJ finds a severe impairment, he or she must then
5 consider whether the impairment “medically equals” or “functionally equals” a
6 disability listed in the regulatory “Listing of Impairments.” *Id.* at § 416.924(c)(d).
7 An impairment is functionally equivalent to a listed impairment if it results in
8 extreme limitations in one area of functioning or marked limitations in two areas.
9 20 C.F.R. § 416.926a(a). An impairment is a “marked limitation” if it “seriously
10 interferes with [a person's] ability to independently initiate, sustain, or complete
11 activities.” 20 C.F.R. § 416.926a(e)(2)(I). By contrast, an “extreme limitation” is
12 defined as a limitation that “interferes very seriously with [a person's] ability to
13 independently initiate, sustain, or complete activities.” 20 C.F.R. §
14 416.926a(e)(3)(I).

15 In determining whether an impairment exists, the ALJ assesses the child's
16 functioning in six domains in terms of his/her ability to: (1) acquire and use
17 information; (2) attend and complete tasks; (3) interact and relate with others; (4)
18 move about and manipulate objects; (5) care for oneself, and (6) his/her general
19 health and physical well-being. 20 C.F.R. § 416.926a(a) (b) (2001). In order to
20 demonstrate functional equivalence under the Final Rules, the child must exhibit a
21 marked limitation in two of the domains, or an extreme limitation in one domain.
22 20 C.F.R. § 416.926a(e)(2)(i).

23 **ALJ’S FINDINGS**

24 At step one of the sequential evaluation process, the ALJ found Plaintiff has
25 not engaged in substantial gainful activity since May 16, 2007, the application
26 date. Tr. 257. At step two, the ALJ found Plaintiff suffered from the severe
27 impairments of right clubfoot with surgical repair. Tr. 257. At step three, the ALJ
28 found Plaintiff’s impairment does not meet, medically equal or functionally equal

1 the severity of one of the Listings. Tr. 258. With regard to functional equivalence,
2 the ALJ concluded that Plaintiff does not have an “extreme” limitation in any
3 domain of functioning or a “marked” limitation in two domains. Tr. 262-66.
4 Accordingly, the ALJ concluded Plaintiff was not disabled within the meaning of
5 the Social Security Act. Tr. 267.

6 **ISSUE**

7 Should the court remand this case for additional administrative hearings or
8 remand for an immediate award of benefits. ECF No. 18; 28; 29.

9 **DISCUSSION**

10 **A. Background**

11 Before the court is the question of remedy – whether the proper remedy in
12 this case is remand for additional administrative proceedings, or remand for
13 calculation of benefits. Plaintiff argues that this case must be remanded for an
14 award of immediate benefits. ECF No. 18 at 18. Defendant argues that the proper
15 remedy is remand for reconsideration of the improperly analyzed medical
16 evidence. ECF No. 28 at 6.

17 Where a child’s impairment does not meet or equal one of the Listings, the
18 impairments are evaluated under a functional equivalency standard. 20 C.F.R. §
19 416.926a. The ALJ is responsible for deciding functional equivalence after
20 consideration of all evidence submitted. 20 C.F.R. § 416.926a(n). The Regulations
21 list the information and factors that are considered in determining whether a child’s
22 impairment functionally equals a Listing. 20 C.F.R. § 416.926a; 20 C.F.R. §
23 416.924a, .924b. In making this determination, the ALJ considers test scores
24 together with reports and observations of school personnel and others. 20 C.F.R. §
25 416.924a(a); 20 C.F.R. § 416.926a(e)(4)(ii). The ALJ also considers how much
26 extra help the child needs, how independent she is, how she functions in school,
27 and the effects of treatment. 20 C.F.R. § 416.926a(b). To functionally equal the
28 listings, the impairments must be of listing-level severity, and must result in

1 "marked" limitations in two domains of functioning or an "extreme" limitation in
2 one domain. 20 C.F.R. § 416.926a(a).

3 In general, in determining whether a child has a "marked" or an "extreme"
4 limitation, the ALJ considers the child's functional limitations resulting from all of
5 impairments, including "interactive and cumulative effects." 20 CFR §
6 416.926a(e). Also in determining the severity of the child's impairment, the ALJ
7 considers "all the relevant information," including signs, symptoms, laboratory
8 findings, and descriptions about the child's functioning from parents, teachers, and
9 others who know the child. 20 C.F.R. § 416.926a(e). The ALJ will consider how
10 the child performs activities as compared to other children her age who do not have
11 impairments. 20 C.F.R. § 416.926a(b).

12 As of January 2, 2009, Jennifer Lentz, M.D., was Plaintiff's treating
13 physician. Tr. 234. On September 30, 2009, Dr. Lentz completed a "Medical
14 Report for Child" form in which she described Plaintiff's condition as club foot
15 with sequelae of decreased length of foot, decreased range of motion at ankle and
16 subtalar joint, decreased muscle girth and weakness, as well as chronic pain and
17 limping. Tr. 239. Dr. Lentz opined that Plaintiff's prognosis for improvement was
18 poor, and she will likely develop arthritis and may require surgery to fuse the
19 bones in her foot. Tr. 239. Dr. Lentz assessed Plaintiff with marked impairments
20 in two domains: Moving About and Manipulating Objects and Health and Physical
21 Well-Being. Tr. 240-41.

22 In support of the marked impairment in the Moving About and Manipulating
23 Objects domain, Dr. Lentz explained that while Plaintiff is able to move her body,
24 she often has pain and she limps. Tr. 240. Additionally, Dr. Lentz noted that
25 Plaintiff did not need an apparatus to assist her, but she "is markedly limited in
26 distance/stamina." Tr. 240. In support of the marked rating in the Health and
27 Physical Well-Being domain, Dr. Lentz explained that Plaintiff suffers reduced
28 stamina with walking, and is "really not able to keep up [with] peers and family,

1 [and] not able to go long distances.” Tr. 241.

2 Non-examining, retired pediatrician Perry Grossman, M.D., testified as a
3 medical expert at Plaintiff’s second hearing. Tr. 326-40. Dr. Grossman testified
4 that in the domain of Moving About and Manipulating Objects, Plaintiff’s
5 impairment was less than marked. Tr. 329. Dr. Grossman noted that Plaintiff was
6 able to walk without assistance from a device, and “she is able to walk at least five,
7 10 minutes without difficulty. She is able to participate at a certain level in
8 sports.” Tr. 329.

9 Dr. Grossman also testified that Plaintiff’s impairment in the domain of
10 Health and Well-Being is less than marked. Tr. 330. Dr. Grossman explained his
11 reasoning, “[s]he does require periodic visits with orthopedic surgeons, and at
12 some time in the future may require additional surgery to stabilize the foot but
13 hasn’t been hospitalized, and has not required repeated emergency room visits and
14 generally enjoys good health. Tr. 330.

15 The ALJ gave some weight to Dr. Lentz’s opinions, but less weight to her
16 opinions related to her assessment that Plaintiff is markedly limited in the two
17 domains. Tr. 261. The ALJ reasoned that Dr. Lentz’s opinions were “inconsistent
18 with her own exam findings as well as the overall medical evidence of record.” Tr.
19 261. The ALJ further cited that Plaintiff “was in no acute distress,” had not
20 undergone a checkup in over a year, and Dr. Lentz suggested Plaintiff attempt
21 physical therapy. Tr. 261.

22 The ALJ gave significant weight to the opinions of non-examining physician
23 Dr. Grossman, on the basis that he had the opportunity to review the record and his
24 opinion was “consistent with objective and physical exam findings as well as the
25 claimant’s activities of daily living.” Tr. 261.

26 **B. REMEDY**

27 The parties agree that the ALJ committed reversible error, but they disagree
28 about the proper remedy. ECF No. 28; 29. The decision whether to remand for

1 further proceedings or for immediate payment of benefits is within the discretion
2 of the court. *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). The issue
3 turns on the utility of further proceedings. A remand for an award of benefits is
4 appropriate when no useful purpose would be served by further administrative
5 proceedings or when the record has been fully developed and the evidence is
6 insufficient to support the ALJ's decision. *Strauss v. Comm'r of the SSA*, 635 F.3d
7 1135, 1138 (9th Cir. 2011).

8 Plaintiff argues that in light of the Defendant's concession that the ALJ and
9 the testifying medical expert erred by finding the ability to walk five to ten minutes
10 equaled a "less than marked" impairment in two functional domains, the court
11 should apply the "credit as true" doctrine, and find Plaintiff disabled. ECF No. 29
12 at 3-6. Defendant concedes that the ALJ failed to "provide legally sufficient
13 reasons for preferring the testimony of the non-examining medical expert to the
14 opinion of Plaintiff's treating physician." ECF No. 28 at 6.¹ Defendant also
15 concedes that the ALJ did not properly evaluate whether Plaintiff's impairment
16 meets or functionally equals a listed impairment. ECF No. 28 at 6-7.

17 Defendant's specific assertion acknowledges Dr. Grossman's opinion that
18 Plaintiff's impairment was less than marked was contrary to the evidence:

19 The ALJ did not resolve the non-examining medical expert's
20 testimony that the claimant could walk only '5 to 10 minutes' –
21 compared to a normal child who can 'walk at a normal pace [an] hour
22 or so more – with the medical expert's conclusion that Plaintiff had
23 'less than marked' limitations in 'Moving About and Manipulating
24 Objects' and 'Health and Well-Being.' ... Remand is required to
clarify this unresolved issue.

25 ECF No. 28 at 7.

26
27 ¹In light of Defendant's dispositive concession, the court will not address
28 this issue.

1 Defendant acknowledged that Dr. Grossman's conclusion that Plaintiff's
2 impairment was less than marked in both domains, in light of the evidence, was
3 error. Contrary to the Defendant's assertion, this concession eliminates any
4 "unresolved issue." If Plaintiff has a greater impairment than "less than marked,"
5 it follows that Defendant concedes that Plaintiff's impairments are at least marked,
6 because the next category of severity of impairment is "marked,"² followed by
7 "severe," also called "extreme." Tr. 239-41; *Beth v. Astrue*, 494 F. Supp. 2d 979,
8 998 (E.D. Wis. 2007) ("The SSA decides a child's disability claim by evaluating
9 her degree of limitation (*i.e.*, extreme, marked, less than marked, or no limitation)
10 in six "domains".)

11 Defendant's argument that the case should be remanded for reconsideration,
12 not for an award of benefits relies upon *Harman v. Apfel*, 211 F.3d 1172, 1180 (9th
13 Cir. 2000). In *Harman*, the court declined to remand for payment of benefits to an
14 adult claimant, because the ALJ did not obtain testimony from a vocational expert
15 about whether the *Harman* claimant's limitations would render him unable to
16 engage in any work. *Id.* *Harman* is inapplicable because vocational expert
17 testimony is not necessary in light of the fact Plaintiff is a minor child, and as
18 noted above, different standards apply to evaluating a childhood disability.

19 In light of Defendant's concession that Dr. Grossman erred by finding
20 Plaintiff had a less than marked impairment in two domains when the evidence
21 supports that Plaintiff has marked impairments in both domains, no useful purpose
22 would be served by further administrative proceedings.

23 Usually, "[i]f additional proceedings can remedy defects in the original
24 administrative proceeding, a social security case should be remanded." *Lewin v.*
25 *Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981). The Social Security Act, however,

26
27 ²A "marked" limitation is described as "a limitation that is 'more than
28 moderate' but 'less than extreme.'" 20 C.F.R. § 416.926a.

1 makes clear that courts are empowered to affirm, modify, or reverse a decision by
2 the Commissioner "with or without remanding the cause for a rehearing." 42
3 U.S.C. § 405(g). Accordingly, in appropriate circumstances, courts are free to
4 reverse and remand a determination by the Commissioner with instructions to
5 calculate and award benefits. *See, e.g., Gentry v. Comm'r of Soc. Sec.*, 741 F.3d
6 708, 730 (6th Cir. 2014); *Jones v. Astrue*, 650 F.3d 772, 397 U.S. App. D.C. 88
7 (D.C. Cir. 2011); *Parsons v. Heckler*, 739 F.2d 1334, 1341 (8th Cir. 1984).

8 The Ninth Circuit clarified the scope of judicial power to remand for an
9 award of benefits in *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396 (9th
10 Cir. 1988) ("Varney II"). The *Varney II* court explained that this credit-as-true rule
11 is designed to achieve fairness and efficiency:

12 We believe [that this] rule promotes the objectives we have
13 identified in prior disability cases. Requiring the ALJs to specify any
14 factors discrediting a claimant at the first opportunity helps to improve
15 the performance of the ALJs by discouraging them from reaching a
16 conclusion first, and then attempting to justify it by ignoring
17 competent evidence in the record that suggests an opposite result." It
18 helps to ensure that pain testimony will be carefully assessed and its
19 importance recognized. Moreover, it avoids unnecessary duplication
in the administrative hearings and reduces the administrative burden
caused by requiring multiple proceedings in the same case.

20 Perhaps most important, by ensuring that credible claimants'
21 testimony is accepted the first time around, the rule reduces the "delay
22 and uncertainty" often found in this area of the law, and ensures that
23 deserving claimants will receive benefits as soon as possible. As
24 already noted, applicants for disability benefits often suffer from
25 painful and debilitating conditions, as well as severe economic
26 hardship. Delaying the payment of benefits by requiring multiple
27 administrative proceedings that are duplicative and unnecessary only
28 serves to cause the applicant further damage—financial, medical, and
emotional. Such damage can never be remedied. Without
endangering the integrity of the disability determination process, a
principal goal of that process must be the speedy resolution of

1 disability applicants' claims. . . .

2 At the same time, the rule does not unduly burden the ALJs, nor
3 should it result in the wrongful award of benefits. . . . [I]f grounds for
4 [concluding that a claimant is not disabled] exist, it is both reasonable
5 and desirable to require the ALJ to articulate them in the original
6 decision.

7 *Id.* at 1398-99 (quotation marks, citations, and alterations omitted). In light of
8 these concerns, the *Varney II* court noted, "[w]here remand would unnecessarily
9 delay the receipt of benefits, judgment for the claimant is appropriate." *Id.* at 1399.

10 One year later, the court held that the credit-as-true rule applies to medical
11 opinion evidence, not only claimant testimony. *Hammock v. Bowen*, 879 F.2d 498
12 (9th Cir. 1989). Since *Varney II*, the Ninth Circuit has applied the credit-as-true
13 rule in nearly two dozen published opinions. The court has devised a three-part
14 credit-as-true standard, each part of which must be satisfied in order for a court to
15 remand to an ALJ with instructions to calculate and award benefits: (1) the record
16 has been fully developed and further administrative proceedings would serve no
17 useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for
18 rejecting evidence, whether claimant testimony or medical opinion; and (3) if the
19 improperly discredited evidence were credited as true, the ALJ would be required
20 to find the claimant disabled on remand. *See Ryan*, 528 F.3d at 1202; *Lingenfelter*,
21 504 F.3d at 1041; *Orn*, 495 F.3d at 640; *Benecke v. Barnhart*, 379 F.3d 587, 595
22 (9th Cir. 2004); *Smolen*, 80 F.3d at 1292.

23 Further, the Ninth has, in a number of cases, stated or implied that it is an
24 abuse of discretion for a district court not to remand for an award of benefits when
25 all of these conditions are met. *See, e.g., Lingenfelter*, 504 F.3d at 1041; *Orn*, 495
26 F.3d at 629; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002);
27 *Harman*, 211 F.3d at 1178; *Smolen*, 80 F.3d at 1292; *Lester*, 81 F.3d at 834;
28 *Ramirez v. Shalala*, 8 F.3d 1449, 1455 (9th Cir. 1993); *Swenson v. Sullivan*, 876

1 F.2d 683, 689 (9th Cir. 1989).³

2 The Ninth Circuit also considers other factors in determining whether to
3 employ the credit as true doctrine. *See Vasquez v. Astrue*, 572 F.3d 586, 593-594
4 (9th Cir. 2009). In *Vasquez*, despite outstanding issues related to whether the
5 claimant was disabled, the Ninth Circuit exercised its discretion and directed the
6 ALJ to credit the claimant's testimony as true because the claimant was of
7 advanced age (58 years old) and she had already experienced a "severe" delay
8 (seven years) in her application. *Vasquez*, 572 F.3d at 593-94. The *Vasquez* court
9 noted that "the purpose of the credit-as-true rule is to discourage ALJs from
10 reaching a conclusion about a claimant's status first, and then attempting to justify
11 it by ignoring any evidence in the record that suggests an opposite result." *Id.*

12 Plaintiff in this case has experienced a similarly lengthy delay as the
13 *Vasquez* claimant: Plaintiff applied for benefits in May, 2007, more than seven
14 years ago. This case has been reviewed by two separate ALJs over three years
15 apart, as well as by the Appeals Council, and was reversed and remanded once by
16 the District Court. As the Ninth Circuit has pointed out, if valid grounds exist for
17 rejecting evidence, "it is both reasonable and desirable to require the ALJ to
18 articulate them in the original decision." *Harman*, 211 F.3d at 1179 (quoting
19 *Varney*, 859 F.2d at 1399. The ALJ failed to provide valid reasons for rejecting
20 the testimony of Plaintiff's treating physician and Plaintiff's mother related to
21 Plaintiff's functional impairments that indicate Plaintiff is disabled.

22 Considering the entire record, the court is persuaded that applying the credit
23 as true rule and remanding for benefits is the proper course in this case. *See*
24 *Varney*, 859 F.2d at 1399 (noting that it is within the Court's discretion to remand

25
26 ³In *Connett v. Barnhart*, 340 F.3d 871 (9th Cir. 2003), the court held that the
27 credit-as-true rule may not be dispositive of the remand question in all cases, and
28 the doctrine envisions "some flexibility." *Id.* at 876.

1 for an award of benefits and finding it appropriate when further proceedings would
2 delay the receipt of benefits). To remand this matter to consider for a third time to
3 reconsider the medical opinions and the lay testimony would subject Plaintiff to a
4 disability system of "heads we win; tails, let's play again." *Id.* (quoting *Moisa v.*
5 *Barnhart*, 367 F.3d 882, 887 (9th Cir. 2004)).

6 CONCLUSION

7 Having reviewed the record and the ALJ's findings, this court concludes the
8 ALJ's decision is not supported by substantial evidence and is based on legal error.
9 Because no remaining issues exist that must be resolved and it is clear from the
10 record that Plaintiff is entitled to disability benefits, the court **REMANDS** to the
11 Commissioner of Social Security for an immediate award of benefits.

12 Accordingly,

13 IT IS ORDERED:

14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is
15 **GRANTED** and the matter is remanded to the Commissioner for an immediate
16 award of benefits.

17 2. Defendant's Motion for Summary Judgment, **ECF No. 28**, is
18 **DENIED**.

19 3. An application for attorney fees may be filed by separate motion.

20 The District Court Executive is directed to file this Order and provide a copy
21 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff, and
22 the file shall be CLOSED.

23 DATED August 5, 2014.



A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE